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Report of the independent expert on the situation of human rights in Haiti, Gustavo Gallón

Summary

Gustavo Gallón, independent expert on the situation of human rights in Haiti, appointed in June 2013 by the Human Rights Council, proposes shock treatment for certain key aspects of the human rights situation in the country, which he considers to be very complex but not insurmountable. The independent expert carried out a mission to Haiti in September 2013, to Port-au-Prince and Jacmel.

On the basis of his predecessors' analyses of the situation, which he shares, the independent expert has identified five main problems that contribute to the commission of human rights violations in Haiti and require urgent action:

First, social inequality, as a result of which much of the population lacks resources and has no access to economic, social and cultural rights;

Secondly, the plight of detainees, particularly the problem of prolonged pretrial detention;

Thirdly, the weakness of the rule of law;

Fourthly, human rights violations committed in the past;

And fifthly, the impact on human rights of the disasters that have hit Haiti. The independent expert specifically addresses the situation of internally displaced persons (IDPs) in camps, mainly as a result of the 2010 earthquake, the cholera epidemic and the situation of people of Haitian origin who could end up being stateless. The independent expert hopes that the proposed shock treatment will help to put an end to violations that persist in these five areas, will send out a strong message showing commitment to remedying the situation and will pave the way for the implementation of recommendations made in the last few decades, particularly in the context of the universal periodic review and special procedures of the Council, which the independent expert reiterates while offering his assistance for their implementation.

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I. Introduction

1. The present report is submitted pursuant to the statement of the President of the Human Rights Council (PRST/22/2) of 22 March 2013, when the Council invited the independent expert to undertake a mission to Haiti and to submit his report to the Council at its twenty-fifth session.

2. Following the resignation, for personal reasons, of Michel Forst in March 2013, the Council appointed Mr. Gustavo Gallón as independent expert on the situation of human rights in Haiti, in June 2013. Mr. Gallón took office on 1 August 2013. This report covers the period from 1 August 2013 to 20 January 2014, and contains recommendations addressed to the Government of Haiti and the international community.

3. The independent expert carried out a mission to Haiti from 23 September to 1 October 2013. He stayed in Port-au-Prince and visited Jacmel. In addition to his mission, he held interviews in New York. He wishes to express his gratitude to all the people he met during his visit.

4. In particular, the independent expert wishes to thank the Haitian authorities, who ensured that the mission went smoothly. He is particularly grateful to the President of the Chamber of Deputies and the Minister Delegate for human rights and the fight against extreme poverty, as well as to other members of the Government for the frankness and quality of their comments.

5. The independent expert also met with the Deputy Special Representative of the Secretary-General and Head of the United Nations Stabilization Mission in Haiti (MINUSTAH), and with the MINUSTAH heads of section, in particular the head of the Human Rights Section. He wishes to thank all the members of their teams who provided effective support, both in Port-au-Prince and while he was travelling, and who shared with him their assessment of the situation. He also thanks the representatives of the United Nations funds and programmes in Haiti and their teams for their support and the information they provided.

6. The independent expert thanks the representatives of the Organization of American States and members of the diplomatic corps with whom he was able to exchange views on the human rights situation in Haiti. He also thanks the Ambassador representing the Union of South American Nations (UNASUR) and the ambassadors of the Group of Friends of Haiti he met in Port-au-Prince and New York.

7. The independent expert extends his sincere thanks to the many representatives of civil society organizations he met in Haiti and New York.

II. Five key aspects of the human rights situation in Haiti

8. The human rights situation in Haiti is very complex but not insurmountable. It has been assessed many times by different analysts and qualified observers. Their assessments coincide and identify the main problems as the great economic insecurity of the majority of the population, which is closely related to the entrenched weakness of the institutions, aggravated by inhumane prison conditions and continued impunity for serious human rights violations that remain unresolved, and by successive natural disasters and fatalities that make it even more difficult to guarantee rights at present and in future.

9. Following his first official visit to Haiti, the independent expert's viewpoint is no different from that of his predecessors. He endorses the wise recommendations made in the last three decades by highly qualified observers, including his predecessors, by the

programmes and specialized agencies and organizations of the United Nations and the Organization of American States, as well as by the Human Rights Council when concluding its universal periodic review of Haiti in October 2011 (A/HRC/19/19).

10. The independent expert notes with satisfaction that the Government has shown its willingness to implement these recommendations, and puts himself at the disposal of the Haitian authorities and society to help achieve this objective. Among the many recommendations, the independent expert would like to highlight five aspects that he considers should be given priority.

A. Economic, social and cultural rights and social inequality

11. The vast majority of the Haitian population lives in poverty. Seventy-six per cent of people earn the equivalent of less than US$ 2 per day, and 60 per cent of them receive less than US$ 1 per day.[1] Although only the latter are officially considered as being in extreme poverty, the living conditions of poor people in general in Haiti are not much better. It would not be an exaggeration to say that all people living in extreme poverty as well as people living in ordinary poverty live in abject poverty in Haiti; namely, a total of 7.5 million out of 10 million people.

12. Beyond the statistics, the extent of poverty is striking in the capital, Port-au-Prince, where the pavements are thronging with street vendors trying to sell all kinds of goods. Port-au-Prince is perhaps the largest flea market in the world, given the large number of suppliers, and, at the same time, the smallest one given the small number of buyers. Yet men, women and even children display their wares every day, from dawn to dusk, awaiting the arrival of some poor customer who will allow them to supplement their income, which is not more, on average, than one or two dollars a day.

13. This established practice is indicative not only of economic uncertainty but also of the extraordinary willingness of a significant proportion of Haitians to work in the most difficult conditions with remarkable tenacity. If these efforts were focused on more productive activities, the wages of a significant portion of the poorest sectors of the Haitian population would be far higher.

14. The unemployment rate has reached 60 per cent, according to the Minister Delegate for human rights and the fight against extreme poverty. This situation, combined with poverty rate mentioned earlier, affects above all the rights to food and housing. Although malnutrition has declined by a third in Haiti since 1990, the Global Hunger Index (GHI), which is 23.3, is considered to be "alarming".[2] It is higher than in the Americas. More than 44 per cent of the population suffers from malnutrition in Haiti.[3]

15. The right to housing is not yet a reality for the majority of Haitians. This housing insecurity has worsened since the earthquake in 2010. As at September 2013, some 280,000 people affected by the earthquake were still in refugee camps. The camps problem, which

[1] Data from before the 2010 earthquake (Haitian Institute of Statistics and Information Technology). According to the Minister Delegate for human rights and the fight against extreme poverty, 4.7 million people live in extreme poverty in Haiti.

[2] An index of 10 to 19.9 is considered as "serious", and 30 and above as "extremely alarming". International Food Policy Research Institute, *2013 Global Hunger Index (GHI 2013)*, available at the following address: www.ifpri.org/tools/2013-ghi-map.

[3] Haïti Press Network, «Haïti-insécurité alimentaire: L'indice de la faim en Haïti toujours alarmant», 14 October 2013. Available at the following address: http://hpnhaiti.com/site/index.php/economie/10690-haiti-insecurite-alimentaire-lindice-de-la-faim-en-haiti-toujours-alarmant.

calls for an urgent solution, will be taken up later in the report. For the time being, it should be noted that the State has planned to build at least 500,000 social housing units, but it is difficult to achieve this goal due, inter alia, to irregularities in the land ownership registration, according to the Government.

16. The situation regarding the right to health is also very serious. According to the United Nations Children's Fund (UNICEF), 60 per cent of the population, mainly in rural areas, does not have access to basic health care.[4] According to the World Health Organization, life expectancy at birth in Haiti was 63 years in 2011.[5] The infant mortality rate in 2011 was 70 per 1,000 births and the maternal mortality rate was 350 per 100,000 live births. Government expenditure on health per capita almost doubled between 2008 and 2010, but is no more than 10 per cent of the State budget. Given the precarious financial situation of most of the population, it is not surprising that "traditional medicine plays an important role because it is the first resort for nearly 80 per cent of the population due to its low cost and proximity".[6] This situation has worsened with the cholera epidemic, which is referred to below.

17. The right to education is not guaranteed for almost half of the country's children – boys and girls who do not go to school. In fact, approximately 80 per cent of schools are private; the absence of economic resources and very limited number of public schools are the main reasons for non-attendance. A significant portion of the adult population is illiterate. From 2007 to 2011, a quarter of young men aged between 15 and 24 and a third of the female population in this age group could neither read nor write.[7] In 2003, "the degree of literacy [was] far better in urban than in rural areas (80.5 per cent versus 47.1 per cent)."[8] According to UNICEF, less than 2 per cent of children of school age complete high school.[9] The average number of years of education is 4.9.[10] The Government informed the independent expert that the free and compulsory universal education programme allowed 1,399,173 children access to free basic education (first and second stages).

18. The very limited access to economic, social and cultural rights for the majority of the population reflects the profound inequalities of Haitian society, as aptly described by the Prime Minister before the United Nations General Assembly, in September 2013: "When President Michel Martelly became president, 76 per cent of the Haitian population lived in poverty, 56 per cent in extreme poverty. That, in a context of strong social inequality."[11]

19. This inequality was analysed by the United Nations Development Programme (UNDP) in its *Human Development Report 2013*,[12] according to which Haiti has one of the lowest human development indexes (HDI) in the world, with 0.456 for the year 2012. Haiti is in 161st place out of 187 countries included. When this index is adjusted according to the

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[4] www.unicef.org/infobycountry/haiti_2014.html.

[5] www.who.int/countries/hti/fr/.

[6] Pan American Health Organization, *Le défi d'Haïti. La santé: un droit pour tous*, Washington, 2005, p. 10.

[7] www.unicef.org/french/infobycountry/haiti_statistics.html#103.

[8] Republic of Haiti, Ministry of the Economy and Finance, Haitian Institute of Statistics and Information Technology, *Le 4ème recensement général de la population et de l'habitat (2003)*. Available at the following address: www.ihsi.ht/rgph_resultat_ensemble_education.htm.

[9] www.unicef.org/infobycountry/haiti_2014.html.

[10] United Nations Development Programme (UNDP), *Human Development Report 2013*. Available at the following address: http://hdr.undp.org/fr/countries/profiles/HTI.

[11] Statement by the Prime Minister, Laurent Salvador Lamothe, during the sixty-eighth session of the United Nations General Assembly, New York, 26September 2013 (see A/68/PV.14).

[12] http://hdr.undp.org/fr/2013-report.

inequalities affecting the poorest, deprived of health, education and dignity, it drops to 0.273. And if we consider the specific inequality between men and women, Haiti is placed 127th out of 148 countries for the year 2012.

20. In order to better understand what these inequality indices mean, one needs to consider the UNDP explanations in this connection: the HDI in 2012 for Haiti of 0.456, "is below the average of 0.466 for countries in the low human development group and below the average of 0.741 for countries in Latin America and the Caribbean."[13]

21. However, since the HDI is not enough to assess the real situation in a society, it has been adjusted to take account of inequalities. According to UNDP: "The HDI is an average measure of basic human development achievements in a country (involving three dimensions: long and healthy life, access to knowledge and decent standard of living). Like all averages, the HDI masks inequality in the distribution of human development across the population at the country level. The *2010 Human Development Report* introduced the Inequality Adjusted HDI (IHDI), which takes into account inequality in all three dimensions of the HDI by 'discounting' each dimension's average value according to its level of inequality. The HDI can be viewed as an index of 'potential' human development and the IHDI as an index of actual human development. The 'loss' in potential human development due to inequality is given by the difference between the HDI and the IHDI, and can be expressed as a percentage."[14]

22. Thus, although the HDI for Haiti in 2012 was 0.456, which is already very low, "when the value is discounted for inequality, the HDI falls to 0.273, a loss of 40.2 per cent due to inequality in the distribution of the dimension indices [...]. The average loss due to inequality for low HDI countries is 33.5 per cent and for Latin America and the Caribbean it is 25.7 per cent."[15]

23. There is a further disparity in the Gender Inequality Index (GII), which "reflects gender-based inequalities in three dimensions – reproductive health, empowerment, and economic activity. Reproductive health is measured by maternal mortality and adolescent fertility rates; empowerment is measured by the share of parliamentary seats held by each gender and attainment at secondary and higher education by each gender; and economic activity is measured by the labour market participation rate for each gender. The GII replaced the previous Gender-related Development Index and Gender Empowerment Index. The GII shows the loss in human development due to inequality between female and male achievements in the three GII dimensions. [...] Haiti has a GII value of 0.592, ranking it 127 out of 148 countries in the 2012 index. In Haiti, 4 per cent of parliamentary seats are held by women, and 22.5 per cent of adult women have reached a secondary or higher level of education compared to 36.3 per cent of their male counterparts. For every 100,000 live births, 350 women die from pregnancy related causes; and the adolescent fertility rate is

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[13] See UNDP, *Indicateurs internationaux de développement humain. Haïti. Profil de pays: Indicateurs de développement humain. Rapport 2013 (http://hdr.undp.org/sites/default/files/Country-Profiles/HTI.pdf)* and *Human Development Report 2013 – The Rise of the South: Human Progress in a Diverse World*, p. 158.

[14] UNDP, *Indicateurs internationaux de développement humain. Haïti. Profil de pays: Indicateurs de développement humain. Rapport 2013* (Subtitle: Inequality. Based on the "Inequality-adjusted Human Development Index" indicator in this document: *Human Development Report 2013. The Rise of the South: Human Progress in a Diverse World*. Explanatory note on 2013 HDR composite indices. Haiti. HDI values and rank changes in the *2013 Human Development Report*). See: http://hdrstats.undp.org/fr/pays/profils/HTI.html (unofficial translation from English). Owing to changes to the UNDP web page, the document is no longer available. The independent expert guarantees the accuracy of this citation.

[15] Ibid.

41.3 births per 1,000 live births. Female participation in the labour market is 60.1 per cent compared to 70.6 for men."[16]

24. The Government has organized a national programme to combat hunger and malnutrition (*Aba Grangou* – "Down with hunger") and a national social assistance programme (*Ede Pep* – "Helping people") consisting of several initiatives: *Panye Solidarité* (60,000 food packages containing local products distributed each month to vulnerable families); *Kore Peyizan* (supporting 60,000 farmers by providing inputs, 5,000 fishermen by supplying basic equipment and 1,000 farmers by providing training in food seed production techniques); and *Kantin Mobil* (64,000 hot meals per month distributed to people in urban areas who suffer from food insecurity). Since these are major initiatives, it is important to focus on the long term in order to achieve the goals they set, namely, to halve the number of people suffering from hunger by the end of 2016, to eradicate hunger and malnutrition by 2025, and to reduce the time frames for achieving these goals, as far as possible.

25. In addition, the Strategic Development Plan for Haiti focuses on five priorities: education and human and social development (access to education, health, social services and culture, and the improvement and quality of the habitat); the environment and land use; the economy and employment; energy; the rule of law and democracy.

26. The independent expert hopes that welfare schemes will help to ensure the well-being of the most vulnerable. He also hopes that the Strategic Plan will help to meet the basic needs of the majority of the population and to identify the factors perpetuating the deep inequalities that mark Haitian society, in order to neutralize them through vigorous policies with a view to creating and guaranteeing, within a reasonably short time frame, decent living conditions for all.

27. The right to education is a key element in the enjoyment of all economic, social and cultural rights. Besides the importance that education itself has for individual personal development, it also helps to strengthen people's capacity to access other basic human rights, such as to food, work, housing and health, with greater autonomy. A decisive, ambitious and generous policy to ensure the right to education has a strong multiplier effect on the realization of other human rights, thereby enabling a large sector of the Haitian population to overcome the problem of limited resources and the inability to meet their basic needs. Such a policy should apply, of course, to children and young people, but also to economically active adults and older persons, as part of a continual and sustained effort to ensure the literacy of the entire Haitian population, as rapidly as possible, as well as to provide them with technical or vocational training. It is recommended that initiatives on the right to education considered by the Government, and in particular by the Ministry for human rights and the fight against extreme poverty, should be along these lines, as well as the universal, free and compulsory education programme, "the *Ti maman Cheri*" programme and a plan to ensure the literacy of the entire illiterate population within the next three years announced to the independent expert by the Government.

28. Special mention should be made of the Office of the Secretary of State for the Integration of Persons with Disabilities which develops initiatives to help the 1 million people living with disabilities to escape their marginality, based on the Convention on the Rights of Persons with Disabilities, ratified by Haiti in 2009, and the Act on the integration of people with disabilities of 13 March 2012. Despite a modest budget, the Ministry works steadfastly with disability organizations in the different regions of the country and in cooperation with other countries.

[16] Ibid. See http://hdr.undp.org/sites/default/files/Country-Profiles/HTI.pdf.

29. The implementation of the International Covenant on Economic, Social and Cultural Rights should be made a priority in order to ensure that the Haitian people have the international protection they deserve in this area. In the light of international recommendations, the Government submitted its request to accede to the Covenant in October 2013.

30. In response to requests for assistance from the Government, the independent expert proposed that an expert in economic, social and cultural rights should be selected to identify, in cooperation with the independent expert, the main causes of the social inequalities in Haiti and to suggest ways of overcoming them. Depending on the resources available, the proposed expert would organize a workshop for two or three days with the Haitian authorities and civil society. During the rest of the week, he would prepare a document summarizing the results of the workshops and presenting his or her own recommendations. The Minister Delegate and the independent expert agreed to implement this proposal.

B. Deprivation of liberty and detention conditions

31. Prisons in Haiti are overcrowded, the vast majority of inmates are being held in prolonged pretrial detention and their detention conditions are often inhuman and degrading.

32. The prison population nationwide exceeds 10,000 inmates, while the planned capacity of the facilities is 4,000 persons maximum. The independent expert visited the civilian prison in Port-au-Prince and Jacmel prison where he was struck by the level of overcrowding: in both prisons, cells of approximately 15 m^2 hold more than 40 people, which is less than 40 cm^2 per person – far from the recommendation of the International Committee of the Red Cross (ICRC) establishing 3.4 m^2 per prisoner as the very minimum (2005).

33. In September 2013, of the 4,039 inmates in the civilian prison of Port-au-Prince, 3,716 (92 per cent) were being held in pretrial detention: they were still waiting to appear before a judge, sometimes for more than two years. In Jacmel, the number of persons being held in pretrial detention was 362 (73 per cent) of 496 inmates. The authorities informed the independent expert that the national average for persons held in pretrial detention was approximately 80 per cent of inmates, 8,000 of the 10,000 persons held in prison. Some of these people have spent more time in pretrial detention than serving the sentence that might be handed down if they were convicted.

34. According to the authorities, this situation is nothing new and is partly due to the fact that there are fewer investigating judges available to hear the detainees. There are not very many judges, and, furthermore, they do not devote enough time to dealing with cases. According to the same sources, some of them spend too much time lecturing and looking after their own affairs.

35. The sanitation facilities in places of detention both in Port-au-Prince and Jacmel are inadequate. There is no privacy and conditions are insanitary, among other things, because of the absence of sewage facilities.

36. Port-au-Prince prison, which is in the town centre, will be demolished to allow for urban redevelopment. It is not yet known where the prison will be transferred.

37. The detention facility in Jacmel is not a prison in the true sense of the term. It is a former military dormitory that was transformed into a prison after 1985 and, according to its director, it does not meet the minimum standards for a prison. A long wall on the south side of the prison collapsed in the wake of Hurricane Sandy in 2012, meaning that it has not

been possible to use the adjacent courtyard since, thus preventing inmates from enjoying that open space. Moreover, the facility houses men, juveniles and women deprived of their liberty, even if they are separated. In addition, the prison is inconveniently located among private homes.

38. The Jacmel prison administration does not have sufficient funds to buy drugs and the Prison Department does not supply enough. Cases that cannot be treated by nurses are referred to the Saint-Michel Hospital in Jacmel. The prison does not receive enough food either. Some suppliers say that since the Prison Department has not paid the price agreed on in their contract they are not able to deliver food.

39. Neither of the two prisons has workshops where inmates might be able to work. It is no longer possible to study there either. One 17-year-old inmate in Jacmel asked the independent expert to seek the authorities' permission so that he can sit the State exams and finish his school leaving certificate. The independent expert has forwarded the request to the prison governor. There were eight other juveniles in Jacmel prison (seven boys and one girl).

40. In short, the situation of persons deprived of liberty is very serious and needs to be resolved through urgent measures aimed at improving health services, ensuring access to food and health care, creating conditions allowing prisoners to work or study and adding a more humane dimension to living quarters and recreational areas. Above all, it is crucial that inmates in prolonged pretrial detention are released and that this practice, which is contrary to the International Covenant on Civil and Political Rights (art. 9), is brought to an end.

41. The situation calls for shock treatment in order to substantially reduce the number of persons held in pretrial detention and to prevent its recurrence. A few judges, assisted by law students in their final year, could be appointed for a specified period of time to examine the cases of prolonged pretrial detention and take a decision on them. Some high-ranking officials are aware of this situation and are working on possible solutions. The Minister Delegate for human rights and the fight against extreme poverty informed the independent expert that she had asked the Minister of Justice to reopen the Office to monitor prolonged pretrial detention before the end of October 2013. The Government has established an ad hoc committee on detention in order to identify persons held in pretrial detention at the national penitentiary. The committee has referred reports on a number of case files to the prosecutor for further action. With the financial support of MINUSTAH and the participation of 55 lawyers, between January and October 2013, the Government provided legal assistance to 5,076 detainees in Port-au-Prince prison, 2,497 of whom were released.

42. In response to requests for assistance from the Government, the independent expert proposed that an expert on matters relating to prisons and pretrial detention be selected to boost efforts under way in the framework of international cooperation (including MINUSTAH, UNDP and bilateral donors) and by the Office of the Ombudsman and the Government, in line with the proposal in paragraph 30. The Minister Delegate and the independent expert agreed that this recommendation should be implemented in 2014.

C. Weakness of the rule of law

43. A third aspect clearly affecting human rights in Haiti is the weakness of its institutions, in particular those relating to access to justice and the certainty of the application of the law.

44. Few people in Haiti have confidence in the role the State can play on their behalf. Whether it concerns land, a court decision, elections, the competence of public authorities

or the provision of health services, the degree of legal uncertainty is considerably higher than in other countries.

45. Property laws are unclear because the cadastral system is deeply flawed. It is not uncommon to find several titles to property concerning a single unit, all different and contradictory and all considered valid. The establishment of a reliable cadastral system is needed to guarantee citizens' rights and to foster economic relations. The independent expert's predecessors stressed this point, including Mr. Louis Joinet, in his report to the Commission on Human Rights, which had proposed the creation of a commission for cadastral reform in cooperation with the international community.[17]

46. As noted above, owing to time constraints, judges are rarely available to deal with the cases for which they are responsible. Many of the people that the independent expert met described a judicial system that has little credibility in the public eye. The reports of the independent expert's predecessors and other experts have highlighted this problem. The professionalism of certain officials is usually criticized, even if it is recognized that in some cases it is satisfactory. In any event, the overall assessment of the quality of the justice system in Haiti is far from positive.

47. Parliamentary and municipal elections should have been held in 2012, but in December 2013, the dates of the elections were not certain.[18] Bills approved by parliament many years ago have not yet been signed by the President. Since the Permanent Electoral Council provided for by the Constitution could not be established, a temporary electoral council was created. These shortcomings, among many others in the institutional framework, are serious grounds for questioning the regularity of the political system and legal order, i.e., the basic rules of the institutional game, knowledge of which is necessary to decide what action to take in the country.

48. This institutional fragility exacerbates the situation of economic, social and cultural rights, as mentioned above, and makes it more difficult to protect them. Generally speaking, the authorities are unable to guarantee citizens the enjoyment of their rights to a minimum level of food, shelter, education, health care or work. Absurd and unthinkable situations arise in this climate of institutional impotence. For example, despite a high rate of illiteracy, there are 278 universities for a population of 10 million. Anyone can start a company to produce and sell university degrees whose legitimacy and quality are by no means verifiable. And it does not seem to worry the State.

49. Social inequalities are growing on account of this institutional obscurity. At the end of the day, the rules that are actually applied are dictated by arbitrary power without any democratic control, which encourages corruption. The inaction or inadequate action of the State can serve the interests and needs of individuals who wield social, economic, coercive or political power.

50. Civil and political rights are also affected by these institutional shortcomings. This can be seen in particular in matters relating to access to justice, a situation that becomes very serious when it concerns the right to life. The independent expert had access to information collected by the National Episcopal Commission for Justice and Peace on violence in the country, according to which the number of homicides has tripled over the past four years. Indeed, in 2012, 1,428 murders were reported (4 per day, on average, a rate of 14.3 murders per 100,000 inhabitants), compared to 559 in 2009 (1.5 per day, 5.6

[17] E/CN.4/2006/115, 26 January 2006, paras. 72, 73 and 83 (f).

[18] "At the time of completion of his report, the independent expert was unaware, owing to repeated deferrals, of the date of the elections and under what political circumstances they would be held", Mr. Joinet wrote during his mandate in 2006 (ibid., para. 79).

murders per 100,000 inhabitants). The increase was gradual and steady. In 2010, 1,045 cases were reported, and 1,298 in 2011. In 2012, 16 of the 1,428 homicides recorded were attributed to the authorities (10, 23 and 27 the previous three years, respectively). Victims of gangs and crimes (1,019) have increased dramatically compared with 2009 (463). There have also been a considerable number of cases of mob justice (lynching) (86, 150, 105 and 113, respectively, from 2009 to 2012), which reflect the lack of confidence in justice.

51. We can therefore note with concern a deterioration in respect for the right to life, due primarily to the inability of the executive branch to protect this right, as well as the passive attitude of the judiciary towards such crimes, starting with those attributed to State agents. The report of the Episcopal Commission does not contain any specific information on this judicial activity, but there is a very harsh conclusion in this regard: "Currently justice is in a lamentable state [...] because other authorities are exercising pressure about judgements to be handed down, sometimes in order to release persons found guilty. This aspect of justice should be considered as one the causes of the sharp rise in mob justice and lynching across the country."[19] This assessment comes from a qualified segment of the population, reflecting a lack of confidence in the State with regard to the protection of human rights. For its part, the Government gives it assurances that the crime rate is now on the decline, since the number of serious thefts recorded has dropped by 34 per cent and the number of cases of abduction by 55 per cent.

52. Violence is also a matter of particular concern. For the years 2009 to 2012, the report of the National Episcopal Commission mentions 57, 39, 65 and 55 cases, respectively. Although the Government reports that the number of rape cases has dropped by 58 per cent, there is considerable underreporting of rape. According to the Episcopal Commission: "Although the number of rape cases reported has not increased, there are reasons for this. The rape cases recorded are the ones which cause public scandal. Rape cases involving minors totalled 19 in number. Conditions must be right for the women to speak up and denounce the rape they suffered. Society does not seem to give rape the full weight of a crime. There is information to prove it. In the event of rape an arrangement can easily be reached between the families concerned. This is completely different from when someone is accused of being a thief and becomes the victim of a summary execution. However, rape can completely destroy a woman's life, especially child rape, rape in the context of criminal gang violence, and rape within the family unit. Much work remains to be done to give rape the real weight of the crime it represents."[20]

53. Attacks against human rights defenders undermine the rule of law and are a manifestation of weakness. The independent expert has received allegations of an attack and a series of acts of intimidation and threats against two women, Ms. Malya Villard Apollo and Ms. Eramithe Delva, co-directors of the Commission of women victims for victims (KOFAVIV), which combats sexual violence. They have allegedly been subjected

[19] National Episcopal Commission for Justice and Peace "Respect pour la dignité et les droits de la personne en Haïti", *Rapport sur la situation de la violence et les violations des droits de la personne dans le pays en 2012*, Rapport de la cinquième année d'observation, Port-au-Prince, pp. 29, 30, 43 and 44.

[20] Ibid., p. 37. Concerning impunity in cases of rape, the MINUSTAH Human Rights Section found that in the Nord Department, although 37 complaints had been received by the prosecution service between May and November 2012, only 16 had been processed. In the Sud Department, while 37 complaints had been received by the prosecution service between May and December 2012, only 18 had been processed (MINUSTAH, Human Rights Section, *Rapport semestriel sur les droits de l'homme en Haïti – Janvier-juin 2013*, Port-au-Prince, September 2013, mimeographed document, p. 28). Along the same lines, see: Agnès Hurwitz, *Assistance légale pour les femmes victimes de violence de genre en Haïti*, UNDP, April 2013.

to acts of intimidation and threats and the attempted abduction of their children, as well as the poisoning of Ms. Apollo's dog on 23 August 2013. KOFAVIV is a women's organization whose aim is to prevent sexual violence in Haiti.

54. The independent expert has also transmitted to the Government a communication according to which on 22 October 2013, the human rights lawyer, Mr. André Michel, was arbitrarily arrested and placed in custody in Port-au-Prince following a search of his car by police. Mr. Michel is the legal representative of a complainant in a case of corruption and appropriation of public goods that allegedly involves members of the President's family. From the very outset, Mr. Michel claimed that he was the victim of intimidation and threats; a warrant that was never executed was issued against him in July 2013 based on his alleged involvement in a murder case. Mr. Michel's client and the complainant in the case were arrested on the same charges and remain in custody. Mr. Michel was released, but a representative of the public prosecutor's office apparently informed the media that the arrest warrant issued against him in July 2013 would be executed. The government Commissioner was quoted as saying that Mr. Michel was a fugitive. The Government asserts that Michel was not prosecuted on political grounds, but for his alleged involvement in a crime.

55. On 30 July 2013, more special procedures mandate holders, including the independent expert, sent a communication to the Haitian authorities according to which two people were attacked, apparently because of their sexual orientation, on 19 July 2013, at a march against homosexuality in Port-au-Prince. Other demonstrations against lesbian, gay, bisexual and transgender (LGBT) persons were held in the capital as well as in Gonaives, where, on 20 July 2013, a demonstration was attended by 300 people. Since the end of June, calls for violence against LGBT persons have been made in the media. As a result, on 15 July, a homosexual was allegedly assaulted by his neighbour and had to flee his home. Between 19 and 24 July, 47 cases of physical assaults against LGBT people were filed. Twenty people were forced to flee because of threats. Members of Kouraj, an association that defends the rights of LGBT persons in Haiti, including its president, Mr. Charlot Jeudy, allegedly received threats because of their work. On 21 November 2013, Kouraj experienced further attacks: three armed men entered its premises and, after hitting and tying up two members of the association, they seized two laptops and other goods. Another organization, SEROvie, ceased its activities for the treatment and prevention of HIV in the north-west of the country for the same reasons.

56. Another manifestation and consequence of the weakness of the rule of law is the continuing problem of child exploitation, where children (especially girls), called *restavèk* are given by their poor parents to other families to "stay with" them and help them with household chores in exchange for accommodation, food and, in principle, an education. In fact, children are systematically deprived of family affection and their right to education, subjected to forced labour, unpaid, and exposed to physical and/or verbal abuse. According to UNICEF, in January 2012, there were about 225,000 *restavèk* children in Haiti.[21] The Special Rapporteur on contemporary forms of slavery, who visited the country in 2009, estimated the number of *restavèk* children at that time to be between 150,000 and 500,000; she described the phenomenon of contemporary forms of slavery and made specific recommendations, including for the creation of a national commission to monitor and ensure the protection of children's rights (A/HRC/12/21/Add.1). The former independent expert drew the attention of the Council of Human Rights to the gravity of this phenomenon

[21] Samuel Grumiau, "UNICEF aids *restavek* victims of abuse and exploitation in Haiti", Port-au-Prince, Haiti, 31 January 2012 (www.unicef.org/infobycountry/haiti_61518.html).

(A/HRC/22/65, paras. 68–70). It is important to emphasize the need to take urgent and effective measures to end this contemporary form of slavery.

57. Building the rule of law is a challenge for and an essential need in Haiti. The Government is aware of this fact and has created an interministerial committee on human rights, under the supervision of the Minister Delegate for human rights and the fight against extreme poverty, so as to coordinate official activities to this end. In response to requests for assistance from the Government, the independent expert proposed that an expert on the rule of law should be selected to participate in a seminar on the topic in line with the principle set forth in paragraphs 30 and 42 above. The Minister Delegate and the independent expert agreed that this recommendation should be implemented in the course of 2014.

D. Past violations and impunity

58. The Haitian people have suffered serious and systematic violations in the recent past that have gone unpunished, which is contrary to the international obligations of the State and undermines its ability to build solid foundations and public confidence in the ability of State institutions to protect the rights of citizens, and to establish a democratic political system.

59. From 1957 to 1986, Haiti was governed under a personal and authoritarian regime by the Duvalier family, without respect for the fundamental rights to life, liberty, integrity, justice, information, and many other civil liberties, including freedom of association, and social, economic and cultural rights. François Duvalier who became president in 1957, declared himself president for life in 1964. When he died in 1971, under the dynastic regime his power was passed on to his son, Jean-Claude Duvalier, until 1986, when he had to leave the country due to lack of popular support.[22]

60. According to the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Haiti in 1994, the situation continued after Duvalier's departure: "From 1983 to 1991, the reports submitted to the Commission [...] denounced the suppression and arbitrary suspension of fundamental civil rights, particularly the freedoms of expression, opinion, press and assembly as well as trade union freedoms and legal guarantees. They also discussed the frequent instances of arrests without guarantees. Also analysed were rural and urban violence; the deplorable prison conditions, systematic torture and ill-treatment; the denial of political rights; and, in general, continued violations of the rights enunciated in the Haitian Constitution and in the human rights declarations and treaties to which Haiti is a party."[23]

61. The military governments which replaced President Jean-Bertrand Aristide, after ousting him in 1991, caused a situation of widespread human rights violations. According to one of the independent expert's predecessors, in 1996: "During the period of the military dictatorship, thousands of people lost their lives; the army is responsible, either directly or indirectly, for these deaths. For three years, summary and extrajudicial executions, enforced disappearances, arbitrary arrest, rape, torture, and cruel, inhuman and degrading treatment inflicted by agents of the State, threats, extortion, and destruction or confiscation of property were a part of daily life for the people. This reign of terror caused about 100,000

[22] Report of the Special Representative of the Commission on Human Rights, E/CN.4/1987/61, 5 August 1987, paras. 1–3, 18 and 87.

[23] Note by the Secretary-General transmitting the interim report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Haiti, Mr. Marco Tulio Bruni Celli, A/49/513, 14 October 1994, annex, para. 6.

Haitians to flee and find refuge abroad, particularly at the American base at Guantanamo, Cuba, and in the Dominican Republic. About 300,000 persons fled Port-au-Prince in order to save their lives and went to the interior of the country."[24]

62. Towards the end of President Aristide's second term of office, and in particular after he left the country in 2004, the findings of one of the independent expert's predecessors, Mr. Louis Joinet in 2005, in his report to the Commission on Human Rights were that "serious violations have persisted". He observed that "these violations generally no longer emanate from the Government as such, but are most often the work of two groups of armed adversaries: on the one hand, certain supporters of the previous Government [...] who seek above all to destabilize the Government [...]; on the other hand, armed groups of former soldiers demobilized during the disbandment of the army in 1995 [...]; and former supporters of President Aristide who have taken up arms against him, setting up the Front de résistance nationale (National Resistance Front (FRN)), and who have thus become the objective allies of their old adversaries, the former soldiers".[25]

63. Many of the violations committed during these periods constitute crimes against humanity, and Haitian society as a whole and the international community is waiting for justice to be done. It is not only the direct victims of these abuses, who are, of course, the first to have the right to seek reparation, in accordance with the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, approved by the United Nations General Assembly in its resolution 60/147 of 16 December 2005, and in accordance with the Set of Principles for the protection and promotion of human rights through action to combat impunity.[26] All Haitians, like the whole of mankind, are the victims of crimes against humanity committed under such circumstances.

64. As far as the violations committed during the Duvalier regime are concerned, 22 complaints of crimes against humanity were filed against Jean-Claude Duvalier, upon his return to the country in 2011, by the victims of his regime, who had joined forces in an action group against impunity. On 27 January 2012, the investigating judge Carvès Jean dismissed the charges for human rights violations upholding only the charges on economic grounds. After hearings held in early 2013, the Court of Appeal in Port-au-Prince must rule on both the appeals filed by Duvalier's lawyers and the complainants against the decision. The acts attributed to Jean-Claude Duvalier are extremely serious.[27] To merely consider his responsibility for crimes such as corruption and embezzlement of public funds in a criminal court for less serious offences, would be a denial of justice for the victims and for humanity as a whole.

65. Reparation for violations committed during the Duvalier regime must include those committed under the Government of François Duvalier, which cannot be dealt with as part of a criminal trial since he is dead. These violations will therefore not be considered during the hearings against his son, but the State has a duty to provide reparation because they were committed under its responsibility, which must be determined through a non-criminal and not necessarily judicial procedure. The best proof of the will of the Haitian Government

[24] E/CN.4/1996/94, 24 January 1996, para. 8.

[25] E/CN.4/2005/123, 24 January 2005, Summary.

[26] See the Independent study on best practices, including recommendations, to assist States in strengthening their domestic capacity to combat all aspects of impunity (E/CN.4/2004/88) and the Report of the independent expert to update the Set of Principles to combat impunity (E/CN.4/2005/102 and Add.1).

[27] See Amnesty International, *You cannot kill the truth: The case against Jean-Claude Duvalier*, London, 2011.

to ensure respect for human rights is to set up its own programme to provide for reparation for the damage caused by the violations during the dictatorship.

66. A National Commission for Truth and Justice was created in 1995. Among other things, it proposed the establishment of a national commission to provide reparation for the damage suffered by thousands of victims of the coup of 30 September 1991.[28] This recommendation has not yet been implemented.

66. As to the violations committed by private groups of supporters and opponents of President Aristide, most cases remain unpunished. Special measures are necessary to ensure the realization of the rights to truth, justice and reparation for the victims of these crimes.

67. Ending impunity for serious human rights violations committed in the past is an obligation, according to the constitutional and international commitments undertaken by the Haitian Government. The efforts made by the State to this end will be rewarded by greater public trust in its institutions. It is probably for these two reasons that the international community has insisted on this matter, both in monitoring the State's commitments in the field of human rights, such as the universal periodic review,[29] as well as in solidarity-based cooperation, such as that provided by UNASUR.[30]

E. Disasters and humanitarian situations

69. The Haitian people have recently undergone major disasters that have exacerbated the human rights situation and whose consequences warrant special attention.

70. The earthquake of 12 January 2010, Tropical Storm Isaac in August 2012 and Hurricane Sandy in October 2012 led to the displacement of 2 million people who were forced to settle in camps. In December 2013, the number of people in these camps decreased to about 146,573, according to the Displacement Tracking Matrix (DTM).[31]

71. In September 2013, the DTM recorded a 24 per cent decrease in the number of displaced persons (approximately 107,000 people) compared to the previous DTM of June 2013. The decrease is largely due to the Government's decision to remove three shelters from the list of IDP sites: those of Canaan, Jerusalem and Onaville. These camps were removed on account of their characteristics; in fact they had become new neighbourhoods that required long-term urban planning. The decrease is also due to return programmes offering rental subsidies or other forms of support, implemented by different partners.

72. The majority of displaced persons (70.6 per cent) live in the three communes of Delmas, Port-au-Prince and Carrefour. It is estimated that only 72 sites are on public land,

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[28] Report of the independent expert, Mr. Louis Joinet, to the Commission on Human Rights (E/CN.4/2003/116), paras. 12 and 13.

[29] A/HRC/19/19, 22 December 2011: Canada recommended that "justice handles, in an impartial manner, the complaints lodged against Mr. Jean-Claude Duvalier" (para. 88.111); Switzerland proposed "the establishment of an international commission against impunity" (para. 88.110); Slovenia, Mexico, Belgium and France were also in favour of fighting impunity (paras. 88.107, 88.108, 88.109 and 88.112).

[30] According to Ambassadeur Rodolfo Mattarollo, "impunity for such crimes is a thorn in the heart of Haiti that can be removed only by society and the Haitian Government", UNASUR, UNASUR-Haiti Technical Secretariat, *Informe final. Conclusiones y Recomendaciones. Agosto 2013*, Port-au-Prince, 2013, p. 2.

[31] Inter-Agency Standing Committee (Haiti E-Shelter/CCCM Cluster), International Organization for Migration, Ministry of the Interior, *Displacement Tracking Matrix (DTM) V2.0 Update*, 10 January 2014 (http://iomhaitidataportal.info/dtm/).

while 229 camps are reportedly on private land. No legal analysis of the land status has been conducted. Eighteen per cent of IDP sites were closed because of return programmes and 11 per cent because of evictions. These evictions, when forced and carried out with the assistance of law enforcement officials and without offering an alternative solution, constitute a violation of human rights.[32]

73. The people who have left the camps in the past two years (over 1.85 million) have not necessarily resolved their housing problem. Most have received a grant to help them find shelter for about a year, but this cannot be considered a sustainable solution.

74. Those that remain in camps live in very precarious, sometimes inhumane conditions. The independent expert visited the KID and Acra camps in Port-au-Prince and the Mayard/Beaudoin and St. Helena camps in Jacmel and found many shortcomings, especially in the KID camp where there is considerable overcrowding, and most dwellings, far from being houses, are small plots covered with plastic sheeting, which is no use when it rains, and where there are no toilets. In other camps, the situation is better but not necessarily good. There is no drinking water available in any of the four camps. There are no schools easily accessible for children. The St. Helena camp in Jacmel must be returned to its owner in March 2014. The 86 families composed of 218 people who are housed there have to leave without knowing where they are going next.

75. While the efforts of the Government and the international community to ensure the well-being of displaced persons must be recognized, they must be intensified to bring to an end, without further delay, the precarious living conditions of these families whose most basic rights, including to housing, hygiene, health, education cannot be realized. This is a situation where human dignity is being eroded day after day; and it is likely to continue in the absence of more radical measures to protect the population, to the extent possible, from the effects of natural disasters, since the earthquake that took place there more than four years ago.

76. Another major disaster which is not natural, but man-made, and with dire consequences is the cholera epidemic that has spread since October 2010. According to estimates, more than 8,300 people have died of the disease, almost 7 per cent of the population (680,800 people) have been affected and about 1,000 people continue to die each year. United Nations troops are suspected of having caused the epidemic. A complaint was filed with a court in New York in October 2013. The United Nations rejected the accusations, based on section 29 of article VIII of the Convention on the Privileges and Immunities of the United Nations, and has done extensive work to counteract the epidemic and to help victims.

77. In the opinion of the independent expert, the diplomatic difficulties surrounding this issue must be overcome in order to assure the Haitian people that the epidemic will be halted as soon as possible and that full reparation for damages will be provided. Some clarifications as to what really happened need to be given and, if necessary, those responsible for the tragedy should be punished, in accordance with the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law mentioned earlier (para. 63). The United Nations should be the first to honour these principles. In this connection, the independent expert endorses the words of his predecessor, who, in his most recent report, noted that "while the independent expert deplores the way that certain organizations have exploited the issue for political ends, he is aware of the need that victims or their families

[32] Since there is not enough room in this report, the independent expert would like to draw attention to the important document published on this matter by Amnesty International, "*Nulle part où aller*". *Expulsions forcées dans les camps pour personnes déplacées d'Haïti*, London, 2013.

have expressed to know the truth and perhaps even to be given compensation. He recalls that silence is the worst response" (A/HRC/22/65, para. 89).

78. A third issue that must be addressed in this chapter is the situation facing many Haitians who are living abroad and risk becoming stateless, according to the representative of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Haiti.[33] Many of them are denied their rights to identity, nationality, personal dignity, and all ensuing rights.

79. In September 2013, the Constitutional Court of the Dominican Republic decided that people born in the country after 1929, whose parents were illegal aliens do not have the right to Dominican nationality. Several international bodies and agencies, such as UNHCR, UNICEF and the Inter-American Commission on Human Rights, have declared that this decision is not in conformity with international obligations. The United Nations High Commissioner for Human Rights also made a statement along those lines.[34] The independent expert shares the views expressed by the High Commissioner and appeals to the Government of the Dominican Republic and the Human Rights Council to ensure that the right to Dominican nationality of descendants of Haitians born in the Dominican Republic is observed.

III. Conclusions and recommendations

80. **The human rights situation in Haiti is extremely serious, but it can be overcome provided that five basic conditions are met, namely: strong political will on the part of the Government and international community; the active participation of civil society; consensus on problems to be resolved as a matter of priority; focusing and coordinating efforts along the same lines, and a strong determination to achieve the goals set.**

81. **The list of issues to be addressed and corresponding solutions are contained in the many reports and recommendations drawn up on Haiti over three decades by experts of United Nations bodies and the Inter-American human rights system. The independent expert reiterates their many recommendations and proposes that five key aspects be selected from their analyses and recommendations to be considered as a matter of priority, and on which efforts should be focused.**

82. **These five closely interrelated aspects are: the deep inequalities within Haitian society, related to the precarious economic, social and cultural rights of the vast majority of the population; the inhumane prison conditions, and situation of persons held in prolonged pretrial detention; the absence of legal certainty in many areas of daily life because of the fact that the rule of law is extremely weak; the blatant impunity for violations committed in the past; and the hardships endured by many victims of natural disasters and other humanitarian crises, such as the earthquake in January 2010, the cholera epidemic since October 2010, or statelessness.**

83. **It is clear that the critical human rights situation in Haiti cannot be resolved overnight, but the problems must come to an end as soon as possible in the five areas mentioned above, as they are a constant source of serious violations:**

[33] According to its data, the number of Haitians living abroad is approximately 4.5 million. In 2007, International Crisis Group estimated that more than 3,710,000 Haitians or descendants of Haitians lived abroad (International Crisis Group, *Peacebuilding in Haiti: Including Haitians from Abroad Latin America/Caribbean Report No. 24*, Port-au-Prince/Bruxelles, 14 December 2007).

[34] www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13808&LangID=E.

(a) The State should establish a reasonably short time frame for eradicating illiteracy, which affects about half of the adult population. Although the reduction of inequalities, including through structural programmes that go beyond social assistance, takes time, literacy is an urgent matter because it is needed in order to live with dignity and to exercise most rights, including the right to education, which itself gives access to other rights such as to work, food, housing and health;

(b) Steps should be taken without further delay to reduce prison overcrowding, set up hygienic sanitation services in prisons, provide food for prisoners and, in particular, release or determine the legal status of persons in prolonged pretrial detention, on the basis of studies already prepared by the prison administration;

(c) Strengthening the rule of law, by consolidating institutions, is complex and time consuming. The technical assistance of an expert, on which the Minister Delegate and the independent expert agreed, would be a step in that direction. However, certain measures must be taken now, particularly with regard to *restavèk* children and population groups at risk;

(d) A commission on the protection of children's rights to deal with the problem of *restavèk* children, as proposed by the Special Rapporteur on contemporary forms of slavery during her mission to Haiti in 2009 (A/HRC/12/21/Add.1), should be established without further delay;

(e) There is also an urgent need to put in place a programme to protect population groups at risk, and, in particular, to prevent attacks against human rights defenders, LGBT persons, or persons exposed to sexual violence;

(f) A national reparation commission should have been created in 1995, when recommended by the National Commission for Truth and Justice for the victims of the 1991 coup d'état, but also for the victims of other serious violations committed in the past, under the Duvalier and military regimes, as well as for the victims of acts of violence perpetrated by groups supporting or opposing President Aristide. In addition to physical reparation measures and judicial declarations of responsibility, the commission could, in the medium and long term, help to define educational activities aimed at restoring the right to memory, which should result in a substantial improvement in the human rights situation in the country;

(g) A significant increase in resources is needed to guarantee the right to housing and decent living conditions for most of the displaced persons who are still in the camps set up after the earthquake of January 2010;

(h) A reparation commission for cholera victims should also be established to enable damages to be recorded, corresponding benefits or compensation to be paid, the persons responsible to be identified, the epidemic to be stopped and other measures to be implemented;

(i) Statelessness is a very broad subject, which is dealt with by UNHCR as the specialized agency of the United Nations. The Human Rights Council should launch an appeal to the States hosting Haitian immigrants to join UNHCR in its efforts to ensure that these people have decent living conditions and the welfare stipulated in Chapter IV of the Convention relating to the Status of Stateless Persons of 1954, and are granted nationality under the conditions laid down in the Convention on the Reduction of Statelessness of 1961;

(j) Particular attention should be accorded specifically to women's rights in all the areas mentioned above. In this connection, the independent expert has

expressed his support for the idea of an expert helping Haiti prepare its report to the Committee on the Elimination of Discrimination against Women.

The measures to be implemented urgently, recommended in the previous paragraph, are necessary for three reasons: first, to put an end to serious violations that would otherwise continue to be committed against thousands of people; subsequently, to convey to the Haitian people and the international community a sense of commitment towards the improvement of the human rights situation; finally, to pave the way for the full implementation of other recommendations on human rights made during the last three decades. The independent expert stands ready to assist in this project.